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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,722	06/26/2003	Silas W. Dunsmore	1352-2	6916

7590 07/20/2006

Raymond E. Farrell
Carter, DeLuca, Farrell & Schmidt, LLP
Suite 225
445 Broad Hollow Road
Melville, NY 11747

EXAMINER

MYINT, DENNIS Y

ART UNIT	PAPER NUMBER
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2162

DATE MAILED: 07/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/608,722	Applicant(s) DUNSMORE ET AL.	
	Examiner Dennis Myint	Art Unit 2162	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-27 and 29-57.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: The applicant's arguments are not persuasive.

1. Applicant argued that Hensley does not teach providing for relocation of the second root directory from the second location which is occupied by the root directory of the HFS. In response, it is pointed out that Maurer III teaches providing for relocation of the second root directory from the second location which is occupied by the root directory of the HFS (Maurer III et al., Paragraph 0112, i.e., In the case where the first logical unit is no longer accessible, such as due to disk failure, the storage array can provide access to the copy of the first logical unit by the client by swapping to the logical unit accessed by the host. In one embodiment, the client and/or client application is not aware that the first logical unit, e.g., original or source, logical unit is no longer being accessed. If desired, a restore can be performed from the copy to the first logical unit and application access to the first logical can be provided after mirror synchronization for the restore is complete.)
2. Applicant argued that Hensley does not teach receiving a request for providing for relocation of the second root directory to the first location. In response, it is pointed out that Maurer III teaches receiving a request for providing for relocation of the second root directory to the first location (Maurer et al., Paragraph 0112). Said request is inherent in performing a restore.
3. Applicant argued that Maurer III exchanging a first sub-hierarchy of at least two sub-hierarchies of a hierarchical file system (HFS) with a second sub-hierarchy of the at least two sub-hierarchies, the HFS.. having one root directory located in a first location occupied by the root directory of the HFS, and providing for the second sub-hierarchy to include a second root directory located in a second location of the HFS that is not occupied by the root directory of the HFS. In response, it is pointed out that said limitations are taught by Hensley in view Maurer III and have been presented in the prior office action.
4. Combination of Hensley and Maurer III does not teach the providing for exchange step is performed without copying content of the first and second plurality of files. In response it is pointed out that Hensley teaches the providing for exchange step is performed without copying content of the first and second plurality of files (Hensley, Paragraph 0023, i.e., Next, the operating system configuration files that were copies to the new emergency directory hierarchy are modified, to replace any references to the original operating system directory structure with references to the new emergency boot directory hierarchy (block 62).

Carmy Mu ✓

Carmy Tuong
primary Examiner